

EXHIBIT 1

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION

v.

U.S. DEPARTMENT OF
AGRICULTURE, et al.,

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Case No.
2:2020cv00041

Monday, April 25, 2022

30(b)(6) Zoom Videoconference
deposition of JOHN KLEIN, taken with the witness
participating from his residence, beginning at
9:38 a.m., Eastern Standard Time, before Ryan K.
Black, a Registered Professional Reporter,
Certified Livenote Reporter and Notary Public.

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1 things of that sort. They're also part of --
2 our headquarters in the Office of Business
3 Development has two field offices that deal with
4 8(a) eligibility cases, one in Philadelphia and
5 one from San Francisco. We also have several
6 disaster offices throughout the country, as well.

7 Q. Were you done with your answer?

8 A. Yeah.

9 Q. Okay. Are the offices in San Francisco
10 and Philadelphia also called central office duty
11 stations?

12 A. I think that's probably true, yes.

13 Q. So the General Contracting and Business
14 Development Office is a division of the Small
15 Business Administration, correct?

16 A. Yes.

17 Q. Okay. And give me a general description
18 of what it does.

19 A. Well, you know, SBA has three basic
20 functions: Credit, capital and contracts. So
21 there's different parts of those things. The
22 Office of Government Contracting and Business
23 Development has all the government contracting
24 programs, in addition to 8(a) Business
25 Development Program. It oversees the Small

1 beginning of your response to my last question
2 and I didn't hear it. Was it a suboffice?

3 A. Maybe that's what I said, sure.

4 Q. Ms. Peebles is the administrator of the
5 Office of Business Development; is that right?

6 A. I'm sorry?

7 Q. Is Ms. Peebles --

8 A. Yes.

9 Q. -- the Administrator of the Office of
10 Business Development?

11 A. She's the associate administrator for
12 Business Development.

13 Q. And does she report to Ms. Hidalgo?

14 A. Yes.

15 Q. Okay. Generally, what are her duties?

16 A. She oversees the running of the Business
17 Development -- 8(a) Business Development Program,
18 all aspects of it, in terms of eligibility, in
19 terms of Business Development 7(j) assistance, in
20 terms of eligibility for contracting. All those
21 sorts of issues.

22 Q. Okay. In the Small Business
23 Act, there's a position called the Associate
24 Administrator for Minority Small Business and
25 Capital Ownership Development. Is that

1 a different position from the one that
2 Ms. Peebles has?

3 A. No. That is the exact position. They
4 just changed the name in practice.

5 Q. When was the name changed in practice?

6 A. Many years ago.

7 Q. Do you know why?

8 A. I do not know why. That's a political
9 issue.

10 Q. Okay. Oh, I should have asked this at
11 the outset: Are you a political appointee?

12 A. No.

13 Q. Are you in the senior executive service?

14 A. Yes.

15 Q. Is there something within the Office
16 of Business Development called the Office of
17 Certification and Eligibility?

18 A. Yes.

19 Q. And can you tell me what that is?

20 A. That is the office that processes all
21 8(a) applications to be admitted to the program.
22 It also oversees certain annual reviews to ensure
23 continued 8(a) eligibility, and it initiates
24 termination and suspension actions when
25 firms should no longer be in the program.

1 Q. There's something in the Small Business
2 Act called the Division of Program Certification
3 and Eligibility. Is that different from the
4 Office of Certification and Eligibility?

5 A. No.

6 Q. There was a name change at some point?

7 A. From time to time, depending upon -- you
8 know, sometimes different administrations called
9 it an office, sometimes they called it a
10 division, but it is the same office.

11 Q. Who's the current director of that
12 office?

13 A. Sandra Barrett.

14 Q. I referred earlier to the central office
15 duty stations. Are they a part of the Office of
16 Certification and Eligibility?

17 A. Yes. Those two are.

18 Q. I'm sorry. Those two ... I didn't hear
19 the last word.

20 A. Yes. They are part of that office, yes.

21 Q. Okay. Is there something within the
22 Office of Business Development called the Office
23 of Management and Technical Assistance?

24 A. That is a suboffice underneath the
25 Office of Business Development, correct.

1 Development Program Application.

2 If someone is applying to the 8(a)
3 Business Development Program online, is this what
4 they would see?

5 A. No.

6 Q. No?

7 A. Online they just get questions.

8 Q. Oh, they don't see a form? Does anyone
9 ever fill out this form anymore?

10 A. I don't think so, but, again, I'm not
11 the tech person so I don't pay attention to that
12 part of it.

13 Q. Okay. I see.

14 A. I mean, I think we just have questions
15 right now. You know, each of these questions is
16 now incorporated into the system and all those
17 questions are asked, but the form itself is not
18 there.

19 MR. ROSMAN: Okay. All right. Now, if
20 you could allow me to stop?

21 All right.

22 BY MR. ROSMAN:

23 Q. So the application is reviewed by a
24 Business Opportunity Specialist; is that right?

25 A. Yes.

1 Q. And that would be one of the Business
2 Opportunity Specialists in either San Francisco
3 or Philadelphia?

4 A. That's the first level, yes.

5 Q. Okay.

6 A. Well, actually, the first level is a
7 screener to make sure that the application is, in
8 fact, complete.

9 Q. Okay. And, presumably, the screener
10 would let the applicant know if it was not
11 complete, right?

12 A. Correct.

13 Q. Okay. So when an applicant to the 8(a)
14 Business Development Program identifies its
15 primary NAICS code, does the SBA review that
16 choice?

17 A. Yes. Based upon the revenues that
18 they've identified over the last few years.

19 Q. Okay. Does it ever suggest that the
20 -- well, let me ask it this way: Does the SBA
21 review that choice deferentially?

22 A. We look at it to make sure it makes
23 sense. If we believe that they've indicated an
24 incorrect NAICS code, we would tell them that and
25 they must readjust.

1 A. Yes.

2 Q. And one of the elements that is analyzed
3 to determine whether or not an applicant has a
4 potential for success is its access to capital
5 sufficient to maintain its business operations,
6 right?

7 A. Yes.

8 Q. Okay. So the business opportunity
9 specialist in Philadelphia or San Francisco
10 reviews it in the first instance; is that right?

11 A. Yes.

12 Q. Okay. And where does the Office of
13 Certification and Eligibility come in?

14 A. The Philadelphia and San Francisco units
15 are under that office, so they are part of the
16 Office of Certification and Eligibility.

17 Q. So the Business Opportunity Specialist
18 that is reviewing the application is part of that
19 office; is that right?

20 A. Yes.

21 Q. Okay. All right.

22 The initial application is supposed to
23 be reviewed in 90 days; is that right?

24 A. Ninety days after the complete
25 application is filed.

1 Q. Okay. Ninety days after it's completed.
2 So if the business opportunity specialist
3 concludes that there's something missing, it
4 could ask for further information and the clock
5 doesn't run until the complete application is in;
6 is that right?

7 A. That's correct. Yes.

8 Q. All right. And is the time, the 90
9 days, the same regardless of whether an applicant
10 is owned by a member of a presumptive group or
11 someone else?

12 A. It is across the board for all
13 applications, whether it's individually owned,
14 whether it's entity owned, whether it's presumed
15 or not.

16 Q. Okay. Okay.

17 In reviewing the application, the
18 Business Opportunity Specialist looks at the
19 personal financial condition of the owner of an
20 individually owned applicant, right?

21 A. Yes.

22 Q. Okay.

23 A. We look at that status for both those
24 who own and those who are in control for both
25 individuals.

1 approvals differ, correct?

2 A Yes, sir.

3 Q. Okay. Do you know what the Office of
4 Hearings and Appeals is?

5 A. Do I know what that is? Is that what
6 the question was?

7 Q. I just asked you if you could identify
8 what it is?

9 A. The Office of Hearings and Appeals is
10 the appellate body of SBA, independent appellate
11 body, that, in the substance that we're talking
12 about, would hear and decide appeals of
13 eligibility determinations and they would
14 also hear and decide cases of terminations or
15 graduations from the program, as well.

16 Q. Okay. All right. So the final
17 dec -- well, skipping the Office of Hearings and
18 Appeals for just a second, the final decision on
19 an application -- well, let's start again.

20 The Business Office Specialist makes a
21 decision, right?

22 A. They make the recommendation, that's
23 correct.

24 Q. Recommendation. Okay. I'm sorry.
25 And I think I may have misspoke. I meant to say

1 Business Opportunity Specialist. The Business
2 Opportunity Specialist makes a recommendation,
3 right?

4 A. Yes.

5 Q. And to whom is that recommendation made?

6 A. There's a supervisory business
7 opportunity specialist in both Philadelphia
8 and in San Francisco. That person would look
9 at every case. From there it would go to
10 the headquarters in SBA for the director of
11 certification and eligibility, who would look at
12 it at that point in time. And from there it
13 would go to the associate administrator for
14 business development.

15 Q. Okay. So Ms. Peebles -- aside from
16 any appeal to Office of Hearings and Appeals,
17 Ms. Peebles has the final say?

18 A. Yes.

19 Q. Okay. There are eligibility reviews
20 done on an annual basis; is that right?

21 A. Yes.

22 Q. Okay. Are there any specific forms that
23 need to be completed with respect to those annual
24 reviews?

25 A. They must -- they must certify that

1 there's no changed circumstances, if that's the
2 case. And if there are changed circumstances,
3 they must identify what those are and demonstrate
4 how, even after those circumstances have changed,
5 the firm continues to be eligible for the
6 program.

7 So they must talk about the revenues;
8 are they still small? They must talk about
9 their income, their assets, et cetera; is the
10 individual still economically disadvantaged?
11 Are there any who's controlling the company?
12 Are there changes in ownership of the company?
13 All those things we look at in terms of the
14 annual review process.

15 Q. Okay. But really what I was asking is
16 is all of that information requested by asking
17 the applicant to fill out a specific form?

18 A. And I was just trying to say this is
19 the information we collect. How we collect it
20 is -- can be -- can differ by office, but, yes,
21 that's what we collect from every firm.

22 Q. Okay. So is it the case in each year
23 that whatever information the applicant submitted
24 about its owner's economic status has to be
25 resubmitted each year?

1 Q. Is it the 408 report?

2 A. I wasn't really following the beginning.

3 Is that what -- tell --

4 Q. That's okay. Let's try it again.

5 A. Yeah.

6 Q. Let me try it again.

7 So there's a provision of 7(j) that
8 says --

9 A. 7(j).

10 Q. Right.

11 -- that says the director of the
12 division, but you told me we now call it Office
13 of Certification and Eligibility, that's supposed
14 to report on the new concerns admitted into the
15 program. And I haven't seen those reports, so I
16 was just asking where they're sent?

17 A. I think that's just part of the 408
18 report that we're talking about.

19 MR. ROSMAN: Okay. All right. I
20 understand that this witness is not designated to
21 testify about Topic 20; is that right, K'Shaani?

22 MS. SMITH: Yes.

23 MR. ROSMAN: K'Shaani?

24 MS. SMITH: I said yes.

25 MR. ROSMAN: Oh, I'm sorry. I didn't

JOHN KLEIN

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 10th day of May, 2022.



Notary Public

ERRATA

1

2 PAGE LINE CHANGE

3 P. 11; Line 24; insert the word "the" between the words "to" and "8(a)" -----

4 Reason for

5 Change: Typo

6 PAGE LINE CHANGE

7 P. 13; Line 12 and Line 13; change the word "cell" to "sub" -----

8 Reason for

9 Change: Typo

10 PAGE LINE CHANGE

11 P. 17; Lines 2-3: insert the word "and" between the words "Management" and "Technical" -----

12 Reason for

13 Change: Typo

14 PAGE LINE CHANGE

15 P. 21; Lines 17-18; change "of participants in a program, dollars," to "participants in the 8(a) program, contract dollars," -----

16 Reason for

17 Change: Typo; clarity

18 PAGE LINE CHANGE

19 P. 40; Lines 8-9; First sentence should read: "I'm sure there are several agencies whose goals for SDBs are greater than 5 percent." -----

20 Reason for

21 Change: Typos

22 PAGE LINE CHANGE

23 P. 54; Line 14; Change "certified.gov" to "certify.gov" -----

24 Reason for

25 Change: Typo

Veritext Legal Solutions

1 PAGE LINE CHANGE

2 _ P. 59; Lines 9-10; change "but on the science part, many times it's" to "but if something is incorrect, many times it's" -----

3 Reason for

4 Change: Transcription error

5 PAGE LINE CHANGE

6 _ P. 59; Lines 17-20; sentence should read as follows: "And they do it based upon a certain size standard. Each NAICS code is assigned a corresponding size standard. So I can register as a small business for NAICS Code 123456, and as an other than small business for NAICS Code 123457, depending upon the corresponding size standard corresponding to the NAICS Code." -----

7 Reason for

8 Change: Typos and Clarification

9 PAGE LINE CHANGE

10 _ P. 60; Line 10; change the word "primary" to "apparent" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 _ P. 74; Lines 3-4; should read "or they look for things as to whether there are any outstanding debts or things of that sort." -----

15 Reason for

16 Change: Transcription error

17 PAGE LINE CHANGE

18 _ P. 83; Line 7; should read "Alaska", not "Alaskan" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 _ P. 83; Line 9; delete "or it's -" and add the word "be" between the words "deemed to" and "owned and" -----

23 Reason for

24 Change: Typo

1 PAGE LINE CHANGE

2 P. 87; Line 4; change "the ANC owns X and Joe Smith owns 400 percent of one company" to "the
3 ANC owns 51% of X and Joe Smith owns 49 percent of that company" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 P. 107; Line 22; change "company Y" to "country Y" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 P. 127; Line 13; change the word "graduate" to "graduation" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 P. 138; Line 24; Change "SDBO" to "SDVO"; change "SWB" to "WOSB" -----

15 Reason for

16 Change: Typos

17 PAGE LINE CHANGE

18 P. 140; Line 12; change "JCBD" to "GCBD" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 P. 140; Line 23; Change "4" to "4.5 million" -----

23 Reason for

24 Change: Typo/clarification

1 PAGE LINE CHANGE

2 P. 153; Line 18; change "an it" to "it an" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 P. 194; Lines 18-19; "7(j) is management technical assistance" should be changed to read "7(j) is a management and technical assistance program" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 P. 195; Line 15; Change "with grants" to "or grants" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 P. 195; Lines 22-23; Change "these contractor grantees" to "these contractors or grantees" ---

15 Reason for

16 Change: Typo

17 PAGE LINE CHANGE

18 P. 199; Line 18; Change "as SBA's" to "of SBA's" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 -----

23 Reason for


24 Change:

ACKNOWLEDGMENT OF DEPONENT

I, John W. Klein, do
 hereby certify that I have read the foregoing
 pages 1 to 212 and that the same is a
 correct transcription of the answers given by
 me to the questions therein propounded,
 except for the corrections or changes in form
 or substance, if any, noted in the attached
 Errata Sheet.

6-10-22

DATE



SIGNATURE

Subscribed and sworn to before
 me this _____ day of _____, 2022.

My commission expires:

Notary Public